EEA information paper as regards issues concerning the implementation of the EU VAT E-commerce package

Contribution to the 41th CEG-GEN & TCG meeting of 20TH September 2021

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Following the entry into force of the new EU VAT E-commerce package on 1st July 2021, the European Express Association (EEA) members have monitored and recorded a number of issues related to the implementation of the new EU VAT rules experienced in different Member States.

Below is a summary of the main issues identified by the EEA members.

1. IOSS P&R shipments

The EEA would like to draw attention to the current scenario where it is not possible to declare Import One Stop Shop' (IOSS) P&R shipments in combination with the full data set customs declaration in some Member States. As a result, EEA Members are unable to process and declare P&R IOSS shipments and are forced by the customs administrations to collect VAT upon import for the same shipment, that was already paid at the moment of sale, by our customers.

This topic was also raised several times by the EEA most recently at the 40th meeting of the Customs Expert Group – General Customs Legislation Section (CEG-GEN) and even though it was concluded that the legal framework is clear and that all Member States should be able to accept and recognize IOSS numbers when using full data set customs declarations, unfortunately it is not working in an harmonised way in all Member States of the European Union.

In accordance with the legislation and in order to ensure compliance with the conditions that **IOSS P&R shipments must be declared using a standard full data set customs declaration (H1)**, EEA members have adapted their procedures accordingly.

EEA members had the clear understanding that Member States would also make the necessary arrangements in their IT systems to receive such declarations and indeed the majority of Member States have done so. According to our information, at no time did any Customs Authority, or the Commission, mention that the UCC Work Program would be an impediment to the full implementation of this legal requirement.

This situation has left our members and indeed our customers, including EU businesses, in a very difficult situation. We wish to comply with the regulations regarding IOSS P&R shipments, however it is not possible in some of the Member States. This has once more highlighted the non-harmonised approach across the EU, which has a detrimental impact on the predictability of trade into the EU and our common objective to promote cross border trade facilitation.

Surely there must be recognition that this issue may have occurred because the EU legislation and UCC Work Program were not aligned correctly and the responsibility to identify creative solutions lies with the

EU Commission, Member States and economic operators. For our part, we are ready to discuss alternative transitional solutions that can be agreed until the 31 December 2022 deadline is reached.

2. Application of Article 221(4) UCC IA

Current version of the legal text:

4. From the date referred to in the fourth subparagraph of Article 4(1) of Directive (EU) 2017/2455, the customs office competent for the release for free circulation of goods in a consignment benefiting from relief from import duty under Article 23(1) or Article 25(1) of Regulation (EC) No 1186/2009, under a VAT scheme other than the special scheme for distance sales of goods imported from third territories or third countries referred to in Title XII, Chapter 6, Section 4, of Directive 2006/112/EC, shall be a customs office situated in the Member State where the dispatch or the transport of the goods ends.

Our members have evidence that the above article is being interpreted and applied in different ways by the Member States. This has caused confusion for economic operators importing consolidated shipments into the EU through different Member States.

The Commission issued a note to the members of the Trade Contact Group on 23 July (Doc. Ares(2021)4749295). In that note it confirmed that economic operators may declare goods of the type referred to in Article 23(1) or Article 25(1) of Regulation (EC) No 1186/2009 for release for free circulation using a standard declaration with full dataset and customs procedure 42 (CP 42), as long as the duty relief is not claimed (i.e., without code C07) and provided that all other relevant conditions to apply CP42 are met. Simultaneously, the Commission has also distributed a note on this interpretation to the Member States' delegates to the Customs Expert Group General Legislation Section.

Despite that very useful clarification, it is still unclear why consignments of goods for taxable persons not exceeding an intrinsic value of €150 cannot initially be released for free circulation in one Member State with full payment of VAT and then delivered to another Member State at a later date. The taxable person can recover the VAT by way of input tax deduction and for the subsequent intra-Community supply, the acquisition tax is again carried out in the Member State of destination.

Even when applying the abovementioned note, still many business-to-business transactions, totally unrelated to E-commerce, are subject to the application of Article 221(4) IA. In our opinion, this is not what the VAT E-commerce rules aim to achieve and we see important industries such as healthcare forced to change their supply chain.

The EEA therefore hopes to find a common understanding between DG TAXUD, Member States and Trade, that would allow the Commission to submit a proposal for a revised Article 221(4) IA, that would address the objectives of the VAT reform without harming legitimate non E-commerce trade.

3. Good subject of prohibitions and restrictions (P&R) and their customs clearance for free circulation

Goods subject to P&R are excluded from using the Super Reduced Data Set (SRDS) and require a customs declaration with full data set. While in some countries the customs authorities have provided us with a reasonable list of HS codes which are excluded from the SRDS, in other Member States a list has been

received which excludes a much larger volume of HS codes that require a full declaration. In some more, no list has been provided to us at all but the rejections by customs authorities due to P&R represent more than half of the total volume of our SRDS customs declarations. In many instances it is not clear to us why these codes have been excluded and on what basis. To this end and since the usage of the SRDS declarations is being significantly reduced in some Member States, an increase in the customs declarations with full data set is now being detected, which is something express carriers together with customs authorities wanted to avoid with the implementation of the E-commerce package.

The "Guidance for Member States and Trade on the Importation and Exportation of Low Value Consignments - VAT E-Commerce package" sets out the procedure for how P&R shipments should be identified in section 2.2.3. It clearly states that "under the condition that they are not subject to P&R" cannot be understood as excluding all goods with a 6-digit HS code that might be linked to a TARIC P&R measure from the use of the Customs Declaration with a SRDS. Experience suggests that some Member States are not following this recommendation and that an excessive list of HS codes is being excluded from the use of the SRDS.

The EEA would therefore welcome a common list which can be accepted by both the Customs Authorities and trade. Also, the EEA supports an examination of the potential for a common framework at EU level as a matter of priority, in order to provide greater certainty and ensure the benefits of the H7 are not minimised.

4. Transport cost in the SRDS

The express operators, as declarants and representatives, are experiencing interpretation issues with the elements in the valuation a.o. transport cost, the insurance cost and all extra costs to be related to the import of a shipment, as elements to be added to the intrinsic value in case of using the SRDS/H7.

According to the IMPORTATION AND EXPORTATION OF LOW VALUE CONSIGNMENTS – VAT E-COMMERCE PACKAGE "Guidance for MSs and Trade" document, the transportation and insurance cost should only be added in field 14 15 014 000 when it is separately mentioned on the supporting documents accompanying the goods.

According to some Member States' Customs Administrations, the customs valuation rules applied to standard declarations (H1) to include transport costs, insurance and other related charges to the import declaration were not changed in the context of the VAT package and therefore should apply in full to the H7/SRDS declarations. Their interpretation is that the express operators should reflect in all situations the exact freight charge amount that are known to the carrier, and include it in the taxable base, whether identifiable on the invoice or not and include it in field 14 15 014 000 in the SRDS.

We wish to highlight that the H7 does not have a field to indicate incoterms, as an indicator to establish who paid the transport cost. Furthermore, the declarant has no indication whether insurance or other associated cost to the import was included unless identifiable on the invoice. Where transport cost is prepaid which is typical to E-commerce and not identifiable on the invoice, adding an extra transport cost lumpsum from the express operator's tariffs would artificially inflate the taxable base with negative effect to the EU Consumer.

We see the indications and instructions from certain Member States' Customs Administrations as a high risk for potential double taxation, a negative outcome that is specifically identified by all stakeholders as one to be avoided in the context of the new VAT rules. Moreover, a streamlined experience for the consumer at checkout was also identified as a key benefit for both traders and consumers in an e-commerce context.

5. EORI number required for SRDS shipments

Multiple Member States customs authorities are requiring a mandatory provision of the EORI number for business-to-business (B2B) shipments utilising the SRDS and/or other scenarios. According to the new Annex B of the EUCDM, however, this number needs only to be provided in the H7 declaration if available at the time of submission.

The interpretation given by the Commission, that the meaning of "availability", with regards to the requirement to provide the EORI number in the SRDS, means that the EORI number simply exists and is assigned to a business operator or a private individual, is in contradiction with the second example in paragraph 2.2.1.2 of the Customs Guidance document 'importation and exportation of low value consignments – VAT e-commerce'. Section '(h) D.E. 13 04 017 000 Importer ID No' that states:

A H7 customs declaration is to be lodged in MS "B" and the importer (i.e. the consignee) is a private individual. The national legislation in that MS requires private individuals to register for EORI. In this case, the EORI number of the private individual is entered in D.E 13 04 017 000 ***provided that the EORI number is available to the person lodging the declaration at the time of submitting it*****.**

6. Inability to utilise the SRDS for B2B shipments

According to the legislation, all incoming shipments up to €150 may be declared using the H7 declaration, except those subject to prohibitions and restrictions (P&R). A selected number of countries who have begun accepting the SRDS as of the date of implementation, however, are not allowing the possibility to declare B2B shipments using this dataset either in all or in limited circumstances. Once again, this is in contravention of the legislation and of the spirit of harmonisation and simplification.

7. Items of correspondence in the context of the VAT E-commerce package

Our members noticed differences in how the Member States are handling items of correspondence since the new rules took effect. Indeed, we have been instructed in several EU Member States to declare items of correspondence using an H7 declaration, while 1 Member State is obliging companies to obtain proof of representation and provide the EORI number of the importer. Items of correspondence were identified in the context of the legal framework Article 141 (2) UCC DA and the Guidance on Low Value Consignments to be declared by any other act. In light of the changes, it would be beneficial to make a detailed explanation and guidance about the application of the rules on items on correspondence.

To ensure a harmonized implementation of the changes introduced as of 1st of July, the EEA calls upon the Commission to assess the abovementioned issues together with Member States and the trade community and reconfirm in an official communication the interpretation of the legislator.

About the EEA

The European Express Association (EEA) represents the interests of the express industry in Europe whose core business is the provision of door-to-door transport and deliveries of next-day or time-definite shipments domestically and across the globe. Express delivery operators are often referred to as "integrators" as they provide their domestic and business customers with an integrated delivery service from end to end: organizing collection, providing tracking information and handling customs clearance where shipments cross international borders. In the European Union, our industry employs 330,000 workers and supports some 1.1 million jobs (estimate – Oxford Economics). In 2018, the European express industry is estimated to have supported a GDP contribution of €69 billion across its direct, indirect and induced impacts (Oxford Economics).

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